

CV-19-1183-00  
Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MICHAEL OSBORNE**

Plaintiff

- and -

**THE MIDLAND POLICE SERVICES BOARD and THE CORPORATION OF  
THE TOWN OF MIDLAND**

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff(s). The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyer(s) or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil

Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: \_\_\_\_\_

Issued by: \_\_\_\_\_

Local Registrar

Address of Court Office: 75 Mulcaster Street  
Barrie, Ontario  
L4M 3P2

**TO: THE MIDLAND POLICE SERVICES BOARD**  
575 Dominion Avenue,  
Midland, Ontario  
L4R 1R2

**AND TO: THE CORPORATION OF THE TOWN OF MIDLAND**  
575 Dominion Avenue,  
Midland, Ontario  
L4R 1R2

**CLAIM**

1. The Plaintiff claims against the Defendants jointly and severally for:
  - (a) damages for breach of contract in the amount of \$750,000;
  - (b) a declaration that the Defendants breached their statutory duty to review the Plaintiff's compensation between 2015 and 2018;
  - (c) an accounting of all salary increases and remuneration owing to the Plaintiff between 2015 and the present;
  - (d) aggravated damages in the amount of \$250,000;
  - (e) punitive damages in the amount of \$100,000;
  - (f) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended;
  - (g) costs of this action on a substantial indemnity basis, plus H.S.T.;and
  - (h) such further and other relief as this Honourable Court shall deem just.

**The Parties**

2. The Plaintiff, Michael Osborne ("**Mr. Osborne**"), is an individual residing in the Town of Penetanguishene, Ontario and at all material times was a member of the Midland Police Service ("**MPS**") and an employee of the Midland Police Services Board (the "**Board**"). Mr. Osborne was a police officer with the MPS from 1991-2001, an

inspector with the MPS from 2001 to 2009 and Chief of Police from 2009 to February 2018; after which MPS was disbanded and the MPS was taken over by the Ontario Provincial Police (“O.P.P.”).

3. The Defendant, the Board, is a Police Services Board created pursuant to section 27 of the *Police Services Act*, R.S.O. 1990, c. P-15, as amended (“PSA”), and was at all material times responsible to report to Council of the Defendant, The Corporation of the Town of Midland (“Midland”) on matters related to the provision of police services to Midland.
4. The Board is a five member board consisting of 2 members of Council, 1 person appointed by Council and 2 persons appointed by the Province.
5. The Defendant, Midland, is a Corporation created under the *Municipal Act*, R.S.O. 1990 c. M-45 or its predecessor, and is statutorily responsible for the government and administration of all matters within its municipal boundaries, authority and jurisdiction, including the Board and MPS. Midland was, at all material times, financially responsible and liable for the question and administration of the Board, the MPS and Mr. Osborne, as Chief of the MPS, under the *Municipal Act* R.S.O. 1990, c M-45 and the *PSA*.

### Tandem Proceedings

6. On January 23, 2018, the Ontario Civilian Police Commission ordered that any dispute with the Board as to severance pay owing to Mr. Osborne is to be submitted to arbitrations in accordance with the provision of the *PSA* (the "**January 2018 Commission Order**").
7. In tandem with this proceeding, Mr. Osborne is pursuing arbitration in respect of disputes he has as to severance pay owing to him in accordance with the January 2018 Commission Order (the "**Osborne Arbitration**"). The proceeding herein is intended to capture legal claims of Mr. Osborne that are (i) not arbitrable, or (ii) are not within the scope of the Osborne Arbitration. To the extent there is any overlap between claims arising in the Osborne Arbitration and claims made herein, the claims made herein are to be considered alternative claims.

### Breach of Contract

8. Mr. Osborne was employed by the Defendants under an employment agreement dated January 1, 2011 ("**Employment Agreement**"). The Defendants were common employers of the Plaintiff.
9. The Employment Agreement provided that its terms could not be interpreted or applied as to be in conflict with the *PSA*.

10. S. 31(1)(d) of the *PSA* requires that the Board must annually review and determine the compensation of Mr. Osborne and take Mr. Osborne's submissions into account.
11. Between 2015 and 2018, the Board did not annually review and determine Mr. Osborne's compensation nor take Mr. Osborne's submissions into account.
12. Towards the end of 2017, Mr. Osborne raised the issue of pay increases. The Defendants continually deferred the issue. Up until 2015, Mr. Osborne's pay increases had mirrored percentage pay increases for the Senior Officers Association ("**SOA**") and the Midland Police Association ("**MPA**") and the reasonable expectation of the parties was that this custom would continue.
13. Mr. Osborne states that, at a minimum, the same percentage of pay increases to the MPA between 2015 and 2018 ought to apply to him.
14. The MPA percentage increases in pay between 2015 and 2018 were:

January 1, 2015	2% increase
December 31, 2015	1% increase
January 1, 2016	1% increase
July 1, 2016	1% increase
January 1, 2017	1% increase
October 1 2017	1% increase
July 1 2018	1.9% increase

15. In the alternative, Mr. Osborne claims for either the same percentage increases in pay for the SOA or the MPA in any given year between 2015 and 2018, whichever is higher.
16. In the alternative, Mr. Osborne claims that any increases in remuneration of the senior inspector in any year between 2015 and 2018 ought to have been mirrored *pro rata* in increases to Mr. Osborne's remuneration at a minimum.
17. Mr. Osborne's pension is based on 60% of the best five years of his annual remuneration and he has suffered damages as a result of a loss in value of his pension entitlement if he is denied the salary increases claimed herein.

### **MPS Disbandment**

18. Between 2015 and 2018, a focus of Midland municipal politics was the issue of whether to disband the MPS and to have Midland's police service provided by the O.P.P.
19. One of the engines for MPS disbandment was an online publication site called MidlandCommunity.ca (MC.ca).
20. MC.ca publically supported the election of certain Midland Council members who also were publicly in favour of disbandment. Upon

election, these Councillors were appointed to the Board including Gord McKay, Stephen Kramp, Stewart Strathearn, Mike Ross and Glen Canning. In turn, these individuals were contributors to or supporters of MC.ca.

### **Breach of Duty of Good faith**

21. In the time period leading up to the MPS's disbandment in February 2018 (the "MPS Disbandment"), Mr. Osborne was subject to a smear campaign by certain members of the Board, Midland Council and MC.ca who were supportive of the disbandment.
22. The smear campaign included:
  - a) leaking of *in camera* communications between Mr. Osborne and the Board to the media;
  - b) efforts to undermine Mr. Osborne through relaying of misinformation about him;
  - c) spreading false rumors about Mr. Osborne including but not limited to that he:
    - i. had caused a former Board member to commit suicide;
    - ii. he had failed to complete inventory of police equipment; and



- iii. he had left the police station in a mess.
  - d) publishing false and misleading information on the Town website about MPS costing relative to the O.P.P. as an alternative policy solution for the Town; and
  - e) the Town of Midland posted a libellous letter on the Town's website, from an individual residing in Midland addressed to the Town Council attacking in part Mr. Osborne's reputation. Mr. Osborne was given no advance notice that the letter had been received nor that it would be posted on the Town website and the Town did not immediately remove the document from all locations upon request.
23. Both immediately before and after the MPS Disbandment, Mr. Osborne was coerced by the Defendants to produce confidential and sensitive police records as a pre-condition to receiving his pay increases and a negotiated settlement of material components of his severance.
24. The documentation the Board sought included, Crown briefs, CPIC records, drug informant information, communications from the Criminal Intelligence Service of Ontario, and the Criminal Intelligence Service of Canada, young offender identifiers, investigative strategies,

victim details, medical records, and financial records, all of which the Board did not have access to prior to the MPS Disbandment.

25. The coercion as described in paragraphs 23 and 24 above was in the form of emails and verbal communications between Mr. Osborne and certain Board members between November 2017 and January 2019 and in written and verbal communications between Board legal counsel and Mr. Osborne or Mr. Osborne's representative.
26. The Board has deliberately frustrated and delayed the ability of Mr. Osborne to resolve the issue of severance owing under the Employment Agreement in that his pay increases between 2015 and 2018 need to be resolved first before severance and pension issues can be determined by s. 40 Arbitration under the *PSA*.
27. The Board's conduct has resulted in Mr. Osborne continuing to be on Midland's payroll instead of receiving a lump sum payout within a reasonable period of time after disbandment.
28. Mr. Osborne has suffered damages as a result, including loss of pensionable income, vehicle expenses, value of certain benefits, including but not limited to insurance coverage, consequential increased tax liability and loss of competitive advantage.

29. Mr. Osborne claims that at a minimum the loss of benefits over the severance period represents a value equal to his annual pension of approximately \$90,000, plus the loss of investment opportunity on the entire payout.
30. Mr. Osborne claims for reimbursement of all vehicle expenses incurred for the operation, maintenance and repair of the vehicle he has at his disposal under the terms of the Employment Agreement.
31. Mr. Osborne repeats and relies on paragraphs 8-30 above and states the Town and the Board has failed to perform the Employment Contract honestly and in good faith further particulars of which are as follows:
- i. in failing to grant pay increases to Mr. Osborne between 2015 and 2018, the Board knowingly acted in breach of the *PSA*;
  - ii. the Board has refused to cover the operating, maintenance and repair costs of Mr. Osborne's vehicle in breach of Article 6.01 of the Employment Agreement;
  - iii. the Board has failed to ensure that certain benefits such as Mr. Osborne's life insurance, illness coverage and out of country insurance coverage apply to him after the MPS Disbandment;

- iv. since the MPS Disbandment the Board has failed to agree on a value of Mr. Osborne's vehicle for purposes of calculating his pensionable income thereby deliberately reducing his pension entitlement;
- v. the Board has failed to attribute a value to the personal component of Mr. Osborne's vehicle which for previous Chiefs was estimated to be \$10,000 per year, negatively affecting Mr. Osborne's pensionable income;
- vi. the Board has failed to administer Mr. Osborne's remuneration in accordance with the *Income Tax Act* exposing Mr. Osborne to CRA penalties and interest which are the direct result of the errors and omissions of the Board;
- vii. certain Board members unduly interfered in police matters by attempting to undermine Mr. Osborne or influence decisions of Mr. Osborne without Board authority, contrary to the *Members of the Police Services Board Code of Conduct*, under the PSA ("*PSA Code of Conduct*"); further particulars of which include:
  - (a) during a meeting to address Mr. Osborne's evaluation, the Mayor asked Mr. Osborne to withdraw a legitimate complaint initiated by Mr. Osborne against the Deputy

Mayor at the time, contrary to ss. 2, 4, 10 and 13 of the *PSA Code of Conduct*;

- (b) Councillor Glen Canning misused confidential information from an *in camera* Board meeting about cost savings and told a Midland police dispatcher that Mr. Osborne wanted to get rid of dispatchers, which statement was false and was made deliberately and maliciously to damage the reputation of Mr. Osborne and undermine his leadership of the MPS, contrary to s. 4 of the *PSA Code of Conduct*;
- (c) the Chair of the Board, George Dixon ("**Chair Dixon**"), used his position to belittle Mr. Osborne and interfere in his day to day running of the MPS, contrary to ss. 2, 8, 10 and 13 of the *PSA Code of Conduct*;
- (d) the provincial Board members were left out of communications and certain Board decisions prejudicing Mr. Osborne's interests, contrary to ss. 1 and 5 of the *PSA Code of Conduct*;
- (e) Chair Dixon and Vice-Chair Stewart Strathearn ("**Vice-Chair Strathearn**") of the Board met with a charged

officer and spoke with the charged officer about an ongoing discipline case. Based on this conversation, they challenged Mr. Osborne about the validity of the discipline case putting pressure on Mr. Osborne to withdraw the charges. Chair Dixon ultimately attended the discipline hearing, took over the negotiations of a settlement of the charge and continuously questioned the validity of the charges and competency of the prosecution and attempted to pressure the Chief to withdraw the charges on favourable terms to the officer charged, contrary to ss. 2, 4, 8, 10 and 13 of the *PSA Code of Conduct*;

- (f) after the discipline case described in (e) was settled, Chair Dixon challenged the legal fees of the prosecutor hired by Mr. Osborne on behalf of the Town and cross-claimed against Mr. Osborne for payment of the prosecutor's legal bill posting the cross-claim against Mr. Osborne on the Town website, contrary to ss. 2, 4, 8, 10 and 13 of the *PSA Code of Conduct*;
- (g) the Board has blocked an FOI request by Mr. Osborne to determine pay increases and remuneration increases

for SOA's, despite the Board releasing the SOA's collective agreement in past years, contrary to ss. 2, 8, 10 and 13 of the *PSA Code of Conduct*;

- (h) Vice-Chair Strathearn presented Mr. Osborne in a bad light in front of a hearing officer by stating that Mr. Osborne had not informed the Board of a request to produce a certain document when Chair Dixon had been informed and had deliberately refused to allow the document to be released, contrary to ss. 2, 8, 10 and 13 of the *PSA Code of Conduct*;
- (i) the Board knowingly provided malicious, inaccurate and unsubstantiated information about the police costing process to the Town and media to undermine the Chief as the CEO of the MPS, contrary to ss. 2, 8, 10 and 13 of the *PSA Code of Conduct*;
- (j) the Board initiated a criminal complaint against Mr. Osborne without foundation and did so maliciously in order to damage his reputation in the Midland community, contrary to ss. 2, 8, 10 and 13 of the *PSA Code of Conduct*;

- viii. the Town, through its representative, disclosed Mr. Osborne as the complainant against the Deputy Mayor in a Council meeting despite the requirement that personnel matters be handled *in camera*; the result was an article in an online publication that was critical of Mr. Osborne;
- ix. the Town after appointing pro-disbandment Board members, tolerated Board members publicly maligning and antagonizing Mr. Osborne in an effort to bring about the MPS Disbandment;
- x. the Town unnecessarily posted a libelous letter disparaging Mr. Osborne on its website; and
- xi. the Defendants have failed to provide Mr. Osborne with information he requires concerning vehicle usage remuneration, negatively affecting Mr. Osborne's tax exposure and pension.

### **Aggravated Damages**

- 32. Mr. Osborne has suffered mental distress as a result of the conduct of the Defendants as pleaded above including, anxiety, inability to focus for prolonged periods and insomnia. Full particulars of Mr. Osborne's medical condition shall be produced in the course of the proceeding.



33. A stigma has been created on Mr. Osborne which will be difficult to remove and his life in the Midland community has been irreparably damaged.
34. Mr. Osborne relies on paragraphs 8 - 33 above and states that the manner in which he was treated by the Defendants up to, during and after the MPA's Disbandment represents unreasonable, dishonest, insensitive, malicious and callous conduct.
35. Mr. Osborne relies on paragraphs 8 - 34 above and states that he is entitled to compensatory and moral damages.

#### **Punitive Damages**

36. Mr. Osborne relies on paragraphs 8 - 35 above and pleads that the Defendants have acted in a high handed, callous, wanton, reckless, egregious and malicious manner with a flagrant disregard for the interests of Mr. Osborne. Mr. Osborne relies on this conduct as a basis for an award of punitive damages, further particulars of which are as follows: the conduct of Board members in engaging in the smear campaign and frustrating and delaying the implementation of the pay increases are contrary to their statutory duty to act in good in faith and without conflict of interest and is tantamount to misfeasance.

37. The Defendants are vicariously liable for the conduct of their members and employees as pleaded herein.

38. Mr. Osborne proposes that this action be tried at the City of Barrie.

July 4  
Date: June 28, 2019

**THE BARRISTERS GROUP**

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